Supreme Court, U.S.
FILED
JUN 5 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1814

In The

Supreme Court of the United States

October Term, 1988

DONALD E. STINNER,

Petitioner,

vs.

ELEANORE STINNER,

Respondent.

v.

THE PENSION PLAN OF THE BETHLEHEM STEEL CORPORATION AND SUBSIDIARY COMPANIES,

Respondent.

BRIEF OF RESPONDENT ELEANORE STINNER IN OPPOSITION TO DONALD E. STINNER'S PETITION FOR A WRIT OF CERTIORARI

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Respondent Eleanore Stinner concurs with the Questions Presented for Review, the Listing of Parties, the Opinions of the Courts Below, the Statement of Jurisdiction, the Statutes Involved, and the Statement of the Case as set forth in Donald E. Stinner's Petition for a Writ of Certiorari, with one (1) exception. On page (ii), of said Petition, in a footnote, the Petitioner avers that the

Bethlehem Steel "Pension Plan does not oppose the granting of this Petition." That is not correct. In fact, the Pension Plan is not taking any position whatsoever in this proceeding before the United States Supreme Court.

SUMMARY OF ARGUMENT

1. THE DECISION OF THE PENNSYLVANIA SUPREME COURT DOES NOT VIOLATE OR CONFLICT WITH ERISA, AS AMENDED BY REA. THE LOWER COURT PROPERLY HELD THAT THE ORDER OF FEBRUARY 5, 1980 IS BASED ON THE DECISIONAL DOMESTIC RELATIONS LAW OF THE COMMONWEALTH OF PENNSYLVANIA, AND THEREFORE, IS A QUALIFIED DOMESTIC RELATIONS ORDER.
2. THE DECISION OF THE PENNSYLVANIA SUPREME COURT DOES NOT CREATE ANY CONFLICT WITH ERISA, AS AMENDED BY REA. SINCE THE ORDER OF FEBRUARY 5, 1980 IS A QUALIFIED DOMESTIC RELATIONS ORDER, IT IS EXEMPT FROM THE ANTI-ALIENATION PROVISIONS OF ERISA, AS AMENDED BY REA.

ARGUMENT

1. THE ORDER OF FEBRUARY 5, 1980 IS A QUALIFIED DOMESTIC RELATIONS ORDER, AND THUS, NEITHER ERISA NOR REA PRECLUDES THE ATTACHMENT OF THE PETITIONER'S PENSION PLAN AT BETHLEHEM STEEL CORPORATION.

The question for review is whether the Order of February 5, 1980, which was entered in enforcement of

the parties' property settlement agreement of June 10, 1977, which contained a provision for the payment of alimony to the wife until death or remarriage, is a qualified domestic relations order within the meaning of Section 206(d) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§1001-1461 (1982), as amended by the retirement Equity Act of 1984 (REA), 29 U.S.C. §1056(d) (1982 & Supp. III 1985).

Donald and Eleanore Stinner were married on January 28, 1956. On September 6, 1977, they were divorced. About two and one-half months prior to the divorce decree the Stinners entered into a property settlement agreement which provided, among other things, that Mrs. Stinner, who had custody of their two daughters, would remain in the family home, and that Mr. Stinner would pay Mrs. Stinner alimony in specified sums for the rest of her natural life or until she remarried.

Mr. Stinner honored the agreement for only eighteen months.

On July 2, 1979, Mrs. Stinner filed a complaint in assumpsit for breach of the agreement and a complaint in equity to enforce it. The trial judge, on February 5, 1980, entered judgment for $8,666.72 in the assumpsit action and ordered specific performance in the equity action.

Mr. Stinner still did not pay.

On July 26, 1985, Eleanore Stinner filed two writs of execution on Bethlehem Steel Corporation to garnish Mr. Stinner's pension, which Bethlehem Steel established under the provisions of ERISA. Bethlehem Steel refused to comply with the garnishment on the ground that the

writ of execution served upon the plan administrator was not a qualified domestic relations order under ERISA.

Domestic relations begin with marriage. If they end by divorce, the parties must follow the law of the jurisdiction where the divorce decree is granted. *That law, whether statutory or common law, is the domestic relations law of that state.*

According to *Black's Law Dictionary,* law is derived either from judicial precedents, from legislation, or from custom. The custom in Pennsylvania before June 30, 1980, was that it was common to induce spouses to forego divorce contests by entering into support agreements. See *Hollman v. Hollman,* 515 Pa. 288, 528 A.2d 146 (1987). Moreover, section 514(c) of ERISA, as amended by REA, defines the term "State law" to include "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. §1144(c)(1) (1982 & Supp. III 1985) (emphasis added). Prior to June 30, 1980, although there was no statutory right to alimony after divorce, except where a spouse was insane or was suffering from a serious mental disorder, or obtained a divorce from bed and board, alimony by separation agreement, even though made in contemplation of divorce, was valid, legal, and enforceable. See *Lurie v. Lurie,* 246 Pa.Super. 307, 370 A.2d 739 (1976) (citing cases).

It was pursuant to this decisional law of the Commonwealth of Pennsylvania that the Stinners, in 1977, entered into the agreement for alimony. Upon the breach of that agreement the Northampton Court of Common

Pleas, which had jurisdiction to enforce alimony agreements, entered the Order of February 5, 1980, which the writ of execution sought to enforce.

Therefore, the February 5, 1980 Order, being based on the decisional domestic relations law of Pennsylvania, is a qualified domestic relations order, and thus, neither ERISA nor REA precludes the attachment of the Petitioner's Pension Plan.

2. THE FEBRUARY 5, 1980 ORDER IS EXEMPT FROM THE ANTI-ALIENATION CLAUSES OF ERISA, AS AMENDED BY REA.

The Order of February 5, 1980, meets all but one minor requirement of a qualified domestic relations order. It was related to alimony payments for a spouse who became a former spouse. It was made pursuant to the decisional domestic relations law of Pennsylvania regarding alimony. It specified the amount of the participant's benefits to be paid and the period to which the Order applied. The Order named the participant and the alternate payee.

The only deficiency in the Order itself was that it did not contain the last known mailing address of either party. This, however, is not a fatal defect. The legislative history of the Act is instructive in this regard. There it is written:

> The committee intends that an order will not be treated as failing to be a qualified order merely because the order does not specify the current mailing address of the participant and alternate payee if the plan administrator has reason to know that address independently of the order.

S.Rep. No. 575, 98th Cong., 2d Sess., reprinted in 1984, *U. S. Code Cong. 8 Admin. News* 2547, 2566.

Obviously, the names of the participant and alternate payee are known to the plan administrator. The address of the participant is known to the plan administrator and, if the address of the alternate payee is not known to him, he has reason to know it independently from one of three sources readily available to him – his records, the records of the Northampton County Court of Common Pleas, which entered the domestic relations order, or from the participant. But for the lack of one easily-ascertainable address, the rights of the alternate payee should not be lost.

The purpose of ERISA's proscription on alienation and assignment is to protect an employee from his own financial improvidence in dealing with third parties. The provision is not intended to alter traditional support obligations, but rather to assure that the employee and his beneficiaries reap the ultimate benefits due upon retirement. *American Telephone & Telegraph Co. v. Merry*, 592 F.2d 118, 124 (2d Cir. 1979); *Cody v. Riecker*, 454 F.Supp. 22, 25 (E.D.N.Y. 1978); *Hopkinson v. Hopkinson*, 323 Pa.Super. 404, 415-16, 470 A.2d 981, 987 (1984). See also *Hollman v. Hollman*, 515 Pa. 288, 528 A.2d 146 (1987), and *Young v. Young*, 507 Pa. 40, 488 A.2d 264 (1985).

There is no violation of the doctrine of federal pre-emption. Moreover, Federal Courts should not involve themselves with domestic matters. *Hisquierdo v. Hisquierdo*, 439 U. S. 572, 99 S.Ct. 802, 59 L.Ed.2d 1 (1979). Clearly, the February 5, 1980 Order is exempt from the anti-alienation provisions of ERISA, as amended by REA.

CONCLUSION

For all of the reasons stated above, it is respectfully requested that the Petition for a Writ of Certiorari be denied, inasmuch as the Pennsylvania Supreme Court's decision in *Stinner v. Stinner*, ___ Pa. ___, 554 A.2d 45 (1989) is correct, and it does not violate conflict with, or pre-empt any Federal law.

Respectfully submitted,

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and

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